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On

September 27, 2007

TOWNSEND and TOWNSEND and CREW LLP

By:

Susan J. Johnson  
Susan J. Johnson

**PATENT**  
**Attorney Docket No.: 011823-004920US**  
**Client Ref. No.: PDL0049-20**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of:

J. YUN TSO

Application No.: 09/618,380

Filed: July 18, 2000

For: HUMANIZED ANTIBODIES  
AGAINST CD3

Customer No.: 45308

Confirmation No. 9002

Examiner: Huff, S. J.

Technology Center/Art Unit: 1643

APPLICATION FOR PATENT TERM  
ADJUSTMENT UNDER 37 C.F.R. § 1.705

Box Issue Fee  
Commissioner for Patents  
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Alexandria, VA 22313-1450

Sir:

**REMARKS**

In response to the Notice of Allowance mailed July 3, 2007 and in accordance with 37 C.F.R. § 1.705, the Applicants respectfully request reconsideration of the patent term adjustment.

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**Statement Of Facts - 37 C.F.R. § 1.705(b)(2)**

**(i) Correct Patent Term Adjustment and Basis**

The Applicants respectfully submit that the correct patent term adjustment as of the date of allowance is 935 days, which is the difference between the total period of PTO examination delay (1,088 days) and the period of applicant delay (153 days).

Additional adjustment may be due for delays following payment of the issue fee in accordance with 37 C.F.R. § 1.703(b).

The patent term adjustment on the Determination of Patent Term Adjustment Under 35 U.S.C. § 154(b) that was attached to the Notice of Allowance is 0 days. A detailed Patent Term Adjustment ("PTAS sheet") was obtained by accessing the Patent Application Information Retrieval (PAIR) web site (a copy of the PTAS sheet is submitted herewith as Exhibit A). The discrepancy between the PTO's determination and applicants' can be traced to a single item relating to the alleged abandonment of the application between July 23, 2004 and April 23, 2007, for which no period of PTO delay was assigned.

In brief, applicants paid the issue fee on July 23, 2004. However, the issue fee was apparently not immediately matched with the application resulting in the issuance of a Notice of Abandonment of the above-referenced application on January 20, 2005 (see Exhibit A, line 74). On applicants' petition to withdraw the holding of abandonment on February 18, 2005, the Office verified the issue fee payment on February 22, 2005 (see Exhibit A, line 77). However, the Office did not grant the petition to rescind abandonment of the application until April 23, 2007 (see Exhibit A, line 83). During the period between February 22, 2005 (verification of issue fee payment by the Office) and April 23, 2007 (grant to rescind abandonment), Applicants *twice* requested the Office, on September 28, 2005 and January 27, 2007, to provide the status of their petition to withdraw the holding of abandonment of the above-referenced application. It was only after the second status request that the Office provided the decision of applicants' petition by the mailing of a Notice of Rescinded Abandonment on April 23, 2007.

It is respectfully submitted that the delay between July 23, 2004 and April 23, 2007 was due to the PTO's failure to match the issue fee with the file, and subsequent

inexplicable further delay in rescinding the holding of abandonment notwithstanding verification of the issue fee payment by February 22, 2005 and applicants' unanswered status requests.

Therefore, applicants respectfully request the PTO be assigned a delay beginning on the day after the payment of issue fee on July 23, 2004 to the date the petition to rescind abandonment of the application was granted, *i.e.*, April 23, 2007 (*i.e.*, 1,004 days).

**(ii) Relevant Dates**

Additions to PTA

(1) As shown on the PTAS sheet (Exhibit A, line 17)

84 days

(2) Issue fee paid 07/23/2004, petition to revive application - granted 04/23/2007

07/23/2004-04/23/2007 = 1,004 days

**84 + 1004 = 1,088 days**

Subtractions from PTA:

As shown on the PTAS sheet (Exhibit A, lines 19 and 49)

**70 + 83 = 153 days**

**Calculation: 1,088-153=935 days**

**(iii) Terminal Disclaimer**

This application is currently subject to a terminal disclaimer to commonly-assigned patent, U.S. Patent No. 6,129,914, issued on October 10, 2000 and expires on October 10, 2017. Even with the requested patent term adjustment, it is believed a patent to issue on the present case will expire before the parent. Accordingly, the filing of a terminal disclaimer over the parent is believed not to affect the calculation of patent term adjustment.

**(iv) Circumstances**

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application.

**Conclusion**

Applicants respectfully request that the patent term adjustment be reconsidered.

The Commissioner is hereby authorized to charge the fee of \$200.00 for filing a request for reconsideration of the patent term adjustment as set forth in § 1.18(e), and any other fees which may be required, or credit any overpayment, to Deposit Account No. 20-1430.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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